

IN THE HIGH COURT OF PUNJAB & HARYAN AT CHANDIGARH

C.R. No.456 of 2007

Date of decision: January 29,2007

Lalit Kumar V. Joginder Singh Authi and another

CORAM: HON'BLE MR.JUSTICE VINEY MITTAL

Present: Shri Arun Jain,Advocate, for the petitioner.

Viney Mittal,J.

Petitioner before this court is a tenant who has been ordered to be ejected under section 13-B of the East Punjab Urban Rent restriction Act,1949 (hereinafter referred to as the “Act”), on an ejectment petition filed by Non-resident Indian-Landlords.

Joginder Singh and Gurdial Singh, landlords, filed an ejectment petition under section 13-B of the Act seeking eviction of the tenant from the shop in question. The ejectment was sought on the ground of personal necessity as provided under section 13-B of the Act. It was pleaded that the landlords are Non-resident Indians and had been residing in England for the last more than 14 years but were even owners of the shop in question for the last more than 30 years. It was pleaded that Joginder Singh, petitioner No.1 had returned to India with intention of settling here and required the shop for his bonafide use and occupation as he wanted to settle in India and start his own business. It was specifically claimed that landlords are not in possession of any other shop within the urban area of Jalandhar and have not vacated any such shop.

On a leave to defend having been granted, the tenant

contested the petition. It was claimed that landlords were not Non-resident Indians. The description of the shop was also challenged. It was denied by the tenant that the landlords had any intention to settle in India or that they had returned in India or wanted the shop for their personal use and occupation.

The Rent Controller on the basis of the evidence brought on record has upheld the personal requirement of the landlords. It has been held that Joginder Singh, landlord No.1, wanted to settle in India and carry on his own business in the shop in question. Various other technical objections raised by the tenant have also been rejected. Consequently, the tenant has been ordered to be ejected from the shop in question.

Shri Arun Jain, learned counsel appearing for the tenant-petitioner has challenged the ejectment order by vehemently contending that on his own showing and pleadings, Joginder Singh, landlord No.1, had already shifted to India one year prior to the filing of the ejectment petition and, as such, having shifted to India, even prior to the incorporation of section 13-B in the Act, could not have taken any advantage of the aforesaid provisions. Learned counsel has argued that provisions of section 13-B of the Act are prospective in nature and could not have been applied retrospectively in favour of a landlord who had already shifted back to India. Learned counsel has maintained that such a landlord could not even be treated to be a Non-resident Indian in terms of section 2(dd) of the Act.

I have duly considered the aforesaid contention raised by the learned counsel.

At the out-set, the provisions of section 2(dd) of the Act may be noticed as follows :

“2(dd) “Non-resident Indian” means a person of Indian origin, who is either permanently or temporarily settled outside India in either case -

- (a) for or on taking up employment outside India; or
- (b) for carrying on a business or vocation outside India; or
- (c) for any other purpose, in such circumstances, as would indicate his intention to stay outside India for an uncertain period.”

A perusal of the definition of Non-resident Indian shows that it means a person of Indian origin who is either permanently or temporarily settled outside India for or on taking upon employment outside India; or carrying on a business or vocation outside India; or for any other purpose for an uncertain period.

It is not in dispute that both the landlords had been living in England. It has been pleaded by them that they had been in England for the last more than 40 years. The landlords possessed passport issued by United Kingdom of Great Britain and Northern Ireland. The provisions of section 13-B of the Act were introduced by way of ordinance with effect from December 27,2000 which ultimately were incorporated vide Act No.9 of 2001 with effect from April 19,2001. Thus, the only question which remains to be examined is as to whether on the date of issuance of ordinance on December 27,2000, the landlords were Non-resident Indians or not ?

The tenant has claimed that since the landlord while appearing as a witness had admitted that he had come back to India, one year prior to the filing of the present petition and the petition had been filed on April 23,2001,therefore, the landlord had permanently come back to India prior to the enactment of section 13-B of the Act.

In my considered view, the statement of the landlord cannot be read in parts. The entire cross-examination of the landlord has been discussed in detail by the Rent Controller. It has been

stated by the landlord that after coming back to India, a year prior to the filing of the ejectment petition, he had gone back to U.K. and had come back again in March, 2001. He had again gone back to England in the first week of May, 2001 and, thereafter, had come back to India in May, 2004. On the basis of the aforesaid statement of the landlord, the Rent Controller has rightly inferred that on the date of filing of the ejectment petition, the said landlord was a Non-resident Indian and, therefore, the ejectment petition filed by him was legally maintainable.

It has not been disputed by the tenant that no other shop was available to the landlords beside the shop in question. The requirement of the landlords is shown to be bonafide.

No other point has been urged.

In these circumstances, I do not find any merit in the present petition. The same is dismissed.

January 29, 2007
sks

(Viney Mittal)
Judge